

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 414 of 1999

in

SPECIAL CIVIL APPLICATION No 5892 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

VB RAYJADA

Appearance:

1. LETTERS PATENT APPEAL No. 414 of 1999
MR AK CLERK for the Appellant
MR TR MISHRA for Respondent No. 1,3-4
NOTICE SERVED for Respondent No. 2
MR VM PANCHOLI, AGP, for Respondent No. 5

CORAM : MR.JUSTICE B.J.SHETHNA

and
MR.JUSTICE A.L.DAVE

Date of decision: 01/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellant-Rajkot Municipal Corporation, by this Letters Patent Appeal, has challenged the order dated 4th February, 1999, passed by the learned Single Judge of this Court (Coram: K.R. Vyas, J.) in Misc. Civil Application No.2719 of 1998, filed in Special Civil Application No.5892 of 1997, whereby the learned Judge allowed the review application filed by the respondents and recalled his earlier order dated 3.3.1998, dismissing the writ petition, i.e. Special Civil Application No.5892 of 1997, filed by the respondents-original petitioners.

2. The respondents-petitioners had filed Special Civil Application No.5892 of 1997 against their apprehended termination. The said writ petition was admitted and interim relief was granted by the learned Single Judge of this Court against the apprehended termination of the petitioners by order dated 8.8.1997 and the said writ petition was ordered to be heard with Special Civil Application No.1499 of 1987 and other allied matters.

3. On 12.1.1998, a Division Bench of this Court (Coram: C.K. Thakkar and R.P. Dholakia, JJ.) dismissed those writ petitions, i.e. Special Civil Application No.1499 of 1987 and other allied petitions, holding that the petitioners were not entitled to equal pay for equal work as their employment was not full-time. However, Their Lordships made it clear that the payment made to them till the date of passing of the order shall not be recovered from them and the petitioners were given liberty to make representation to the appropriate authority, which may be decided by the authority in its proper perspective and the authority was ordered to pass appropriate orders on it.

4. On 3.3.1998, Mr. Gadhiya, learned counsel appearing for the appellant-Corporation-original respondent stated before the learned Single Judge that the Division Bench of this Court dismissed Special Civil Application No.1499 of 1987 and other allied matters on 12.1.1998. In view of this order passed by the Division Bench of this Court on 12.1.1998, dismissing the writ petitions, i.e. Special Civil Application No.1499 of

1987 and other allied matters, the learned Single Judge also dismissed the writ petition, i.e. Special Civil Application No.5892 of 1997, filed by the respondents-petitioners.

5. After the aforesaid order of dismissal passed by the learned Single Judge of this Court, the Division Bench of this Court (Coram: C.K. Thakkar and R.P. Dholakia, JJ.), on 10.7.1998, recalled its order dated 12.1.1998 dismissing Special Civil Application No.1499 of 1987 and other allied matters, in review application. Therefore, the present respondents filed Misc. Civil Application No.2719 of 1998 in Special Civil Application No.5892 of 1997. In view of the subsequent order passed by the Division Bench of this Court on 10.7.1998, the learned Single Judge, by order dated 4.2.1999, recalled his earlier order dated 3.3.1998, dismissing Special Civil Application No.5892 of 1998. This has been challenged in this appeal by the appellant-Rajkot Municipal Corporation-original respondent.

6. Learned counsel, Shri Clerk, for the appellant-Corporation submitted that the respondents-original petitioners suppressed the material fact in their review application, i.e. Misc. Civil Application No.2719 of 1998, that after their writ petition was dismissed on 3.3.1998 by the learned Single Judge of this Court, their services were terminated by an order dated 6.5.1998 (Annexure-A to this appeal). He submitted that, by the termination order dated 6.5.1998, simultaneously, the scheme in question also came to an end. He, therefore, submitted that the learned Single Judge committed grave error in accepting the review petition of the respondents-original petitioners because the scheme was not in existence at all on 4.2.1999, when he allowed the review application. He also submitted that the Division Bench of this Court accepted the review petitions, i.e. Misc. Civil Applications No.703 to 719 of 1998, and reviewed its earlier order dated 12.1.1998 on the ground that the scheme was continued to operate. He, therefore, submitted that, without considering this important aspect, the learned Single Judge accepted the review petition simply because the Division Bench had accepted the review applications filed before it and recalled its earlier order dated 12.1.1998, dismissing Special Civil Application No.1499 of 1987 and other allied matters.

7. From the order at Annexure-A dated 6.5.1998 passed by the appellant-Corporation, it is clear that the scheme was closed on account of the dismissal of writ

petition, i.e. Special Civil Application No.5892 of 1997, filed by the respondents-petitioners. Therefore, the services of the respondents were terminated by that order. There is no question of suppression of material fact by the respondents-petitioners in their review application filed before the learned Single Judge by not mentioning that the scheme in question came to an end. It has nothing to do with the review of the order dated 3.3.1998 passed by the learned Single Judge of this Court, whereby the learned Single Judge dismissed their writ petition, i.e. Special Civil Application No.5892 of 1997. The learned Single Judge dismissed Special Civil Application No.5892 of 1997 by his order dated 3.3.1998 only on the ground that identical writ petitions, i.e. Special Civil Application No.1499 of 1987 and other allied matters, were dismissed by the Division Bench of this Court. If the Division Bench of this Court had not dismissed those petitions, then there was no question of dismissing Special Civil Application No.5892 of 1997 filed by the respondents-petitioners. When the Division Bench of this Court had accepted review applications and recalled its earlier order dated 12.1.1998, dismissing writ the petitions, i.e. Special Civil Application No.1499 of 1987 and other allied matters, then, in our considered opinion, the learned Single Judge was fully justified in accepting the review petition, i.e. Misc. Civil Application No.2719 of 1998 in Special Civil Application No.5892 of 1997, filed before him. Whether the scheme was closed or not would hardly matter for reviewing the order. If the learned Single Judge had not accepted the review application and recalled his order dismissing the writ petition of the respondents-petitioners, then grave injustice would have been done to them. By reviewing his order recalling the order of dismissal, the learned Single Judge had only restored the main writ petition to the file with the interim order passed on it. That order was passed on 4.2.1999. Instead of arguing the main writ petition, i.e. Special Civil Application No.5892 of 1997, before the learned Single Judge, the appellant-Corporation thought it fit to challenge the same by way of this appeal, which has come up for admission before this Court today after a period of more than four years. During this period, they simply went on making payments to the respondents-original petitioners, without taking work from them. For this, they have to blame themselves. Even today, it is not too late for the appellant-Corporation to move the learned Single Judge for taking up the main writ petition, i.e. Special Civil Application No.5892 of 1997, for early disposal. We are sure that, as and when such a request is made before the

learned Single Judge, then he will definitely try to decide the main writ petition, i.e. Special Civil Application No.5892 of 1997, as early as possible.

8. In view of the above, we do not find any substance or merits in this appeal and, accordingly, it fails and is hereby dismissed. Notice is discharged with no order as to costs.

[B.J. SHETHNA, J.]

[A. L. DAVE, J.]

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